

three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 18, 1979, by a non-record vote; passed by the Senate on May 25, 1979: Yeas 30, Nays 0.

Approved June 13, 1979.

Effective Sept. 1, 1979.

ALCOHOLIC BEVERAGE REGULATION

CHAPTER 777

H. B. No. 1740

An Act relating to alcoholic beverage regulation.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 206, Alcoholic Beverage Code, is amended by adding ⁸⁶ Section 206.07 to read as follows:

Sec. 206.07. Payment of Tax by Mail

(a) The payment of any tax imposed by this code is timely made if not later than the date on which payment is due the tax is mailed to the commission in an envelope with the proper address and postage and is received by the commission not later than the 10th day after the date on which it was due.

(b) A legible postmark made by the United States Postal Service is prima facie evidence of the date of mailing.

Sec. 2. Section 5.01, Alcoholic Beverage Code, is amended ⁸⁶ to read as follows:

Sec. 5.01. Texas Alcoholic Beverage Commission

(a) The Texas Alcoholic Beverage Commission is an agency of the state.

(b) The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless it is continued in existence as provided by that Act, the commission is abolished and this code expires on September 1, 1987.

Sec. 3. Section 11.46, Alcoholic Beverage Code, is amended ⁸⁷ to read as follows:

Sec. 11.46. General Grounds for Refusal

(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

⁸⁶. V.T.C.A. Alcoholic Beverage Code, § 206.07. ⁸⁷. V.T.C.A. Alcoholic Beverage Code, § 11.46.

⁸⁸. V.T.C.A. Alcoholic Beverage Code, § 5.01.

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is less than 18 years of age;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not have an adequate building available at the address for which the permit is sought;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

(b) The commission or administrator shall refuse to issue an original permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required, for the place of business for which the alcoholic beverage permit is sought.

Sec. 4. Section 11.61(a), Alcoholic Beverage Code, is amended⁸⁸ to read as follows:

(a) As used in Subsection (b) of this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted under Section 22.06, 24.05, or 102.05 of this code.

Sec. 5. Section 11.61, Alcoholic Beverage Code, is amended by adding⁸⁹ Subsection (c) to read as follows:

(c) The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

Sec. 6. Section 61.42, Alcoholic Beverage Code, is amended⁹⁰ to read as follows:

Sec. 61.42. Mandatory Grounds for Refusal: Distributor or Retailer

(a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant is under 18 years of age;

(2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;

(3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;

(5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;

(6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;

(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned

⁸⁸ V.T.C.A. Alcoholic Beverage Code, § 11.61, subsec. (a).

⁸⁹ V.T.C.A. Alcoholic Beverage Code, § 11.61, subsec. (c).

⁹⁰ V.T.C.A. Alcoholic Beverage Code, § 61.42.

at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant for a beer retailer's on-premise license for a railway car.

(b) The county judge, commission, or administrator shall refuse to approve or issue an original retail dealer's or retail dealer's on-premise license unless the applicant for the license files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

Sec. 7. (a) Subchapter C, Chapter 61, Alcoholic Beverage Code, is amended by adding ⁹¹ Section 61.711 to read as follows:

Sec. 61.711. Grounds for Cancellation or Suspension: Sales Tax

The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the license; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b)⁹² If Senate Bill No. 865 ^{92a} or House Bill No. 1444, 66th Legislature, Regular Session, is enacted and adds a Section 61.711 to the Alcoholic Beverage Code, the section of the code added by Subsection (a) of this section is redesignated as Section 61.712.

Sec. 8. Section 32.06, Alcoholic Beverage Code, is amended ⁹³ to read as follows:

Sec. 32.06. Pool System

(a) The pool system of storage may be used in any area. Under this system all members of a pool participate equally in the original purchase of all alcoholic beverages. The replacement of all alcoholic beverages shall be paid for either by money assessed equally from each member and collected in advance or by the establishment of an alcoholic beverages replacement account in which a designated percentage of each charge for the service of alcoholic beverages, as determined by the club's governing body, is deposited.

(b) If an alcoholic beverages replacement account is used:

(1) each service check shall have printed on it the percentage of the service charge that is to be deposited in the alcoholic beverages replacement account;

(2) no money other than the designated percentage of service charges may be deposited in the replacement account;

91. V.T.C.A. Alcoholic Beverage Code, § 61.711.

92. V.T.C.A. Alcoholic Beverage Code, § 61.712 note.

92a. So in enrolled bill: probably should read "685" (ch. 632).

93. V.T.C.A. Alcoholic Beverage Code, § 32.06

(3) the replacement of alcoholic beverages may be paid for only from money in the replacement account;

(4) the club's governing body may transfer from the replacement account to the club's general operating account any portion of the replacement account that the governing body determines is in excess of the amount that will be needed to purchase replacement alcoholic beverages, but it may make only one transfer in a calendar month; and

(5) the club shall maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages, and the amount transferred to the club's general operating account.

Sec. 9. (a)⁹⁴ This section does not take effect if House Bill No. 869,⁹⁵ Acts of the 66th Legislature, Regular Session, 1979, takes effect and amends Section 101.46, Alcoholic Beverage Code.

(b) Section 101.46, Alcoholic Beverage Code, is amended ⁹⁶ to read as follows:

Sec. 101.46. Containers of Liquor: Minimum Capacities

(a) Except as provided in Subsection (b) of this section, no person may import, sell, or possess with intent to sell any liquor in a container with a capacity of less than six fluid ounces.

(b) Subsection (a) of this section does not apply to permittees or licensees while engaged in supplying airline beverage or mixed beverage permittees, nor to the possession or sale of liquor by an airline beverage or mixed beverage permittee, but none of the permittees or licensees covered by this subsection may possess liquor in a container with a capacity of less than one fluid ounce.

Sec. 10. Section 101.47, Alcoholic Beverage Code, is amended ⁹⁷ to read as follows:

Sec. 101.47. Carrier May Transport Liquor in Small Containers

The commission may authorize a common carrier of persons engaged in interstate commerce to transport liquor in containers of less than six fluid ounces if the liquor is not for sale, use, or consumption in the state.

Sec. 11. Section 63.01, Alcoholic Beverage Code, is amended ⁹⁸ to read as follows:

Sec. 63.01. Authorized Activities

The holder of a nonresident manufacturer's license may transport beer into Texas only to holders of importer's licenses. The nonresident manufacturer's licensee may transport the beer in carriers or vehicles operated by holders of carrier's permits or in motor vehicles owned or leased by the nonresident manufacturer. The beer must be shipped in barrels or other containers in accordance with the provisions of this code and may not be shipped into the state in tank cars.

94. V.T.C.A. Alcoholic Beverage Code, § 101.46 note.
94a. Chapter 552
95. V.T.C.A. Alcoholic Beverage Code, § 101.46

96. V.T.C.A. Alcoholic Beverage Code, § 101.47
97. V.T.C.A. Alcoholic Beverage Code, § 63.01

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Sec. 12. Section 67.01, Alcoholic Beverage Code, is amended¹ to read as follows:

Sec. 67.01. Authorized Activities

A holder of an importer's license may import beer into this state only from the holder of a nonresident manufacturer's license. The beer may be transported by a railway carrier, or by a common motor carrier operated under a certificate of convenience and necessity issued by the Railroad Commission of Texas or by the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is consigned to an importer.

Sec. 13. Section 105.05(d), Alcoholic Beverage Code, is amended² to read as follows:

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

- (1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and
- (2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

Sec. 14. Section 5.36, Alcoholic Beverage Code, is amended¹ to read as follows:

Sec. 5.36. Investigation of Violations

(a) The commission shall investigate violations of this code and of other laws relating to alcoholic beverages, and shall cooperate in the prosecution of offenders before any court of competent jurisdiction. The commission may seize alcoholic beverages manufactured, sold, kept, imported, or transported in violation of this code and apply for the confiscation of the beverages if required to do so by this code.

(b) A law enforcement agency of this state or of any of its political subdivisions shall furnish to the commission without charge any criminal history information in its files or available to it from any source. Information obtained by the commission under this subsection may be used only for the enforcement and administration of this code.

Sec. 15. Section 5.44(a), Alcoholic Beverage Code, is amended² to read as follows:

(a) The commission or administrator, or an inspector or representative of the commission under the direction of the commission, for the purposes of this code, may:

- (1) issue subpoenas;
- (2) compel the attendance of witnesses;
- (3) administer oaths;
- (4) certify to official acts;
- (5) take depositions inside or outside the state, as provided by law;

99. V.T.C.A. Alcoholic Beverage Code, § 67.01.	1. V.T.C.A. Alcoholic Beverage Code, § 5.36.
99. V.T.C.A. Alcoholic Beverage Code, § 105.05(d).	2. V.T.C.A. Alcoholic Beverage Code, § 5.44(a).

(6) compel the production of pertinent books, accounts, records, documents, and testimony; and

(7) certify to copies of documents as being true copies on file in the official records of the commission.

Sec. 16. Chapter 5, Alcoholic Beverage Code, is amended by adding³ Section 5.441 to read as follows:

Sec. 5.441. Fees and Expenses Paid Members or Employees of Commission

(a) If a member of the commission, the administrator, or an employee of the commission is called to attend a federal or state judicial proceeding inside or outside the state and the attendance relates to the individual's duties with the commission, the individual shall pay to the state treasurer any witness fees he receives. The treasurer shall deposit the fees in the state treasury to the credit of an appropriation made to the commission for payment of fees and mileage of witnesses called by the commission.

(b) An employee of the commission who travels inside or outside the state on official business as the designated representative of the administrator is entitled to reimbursement for meals, lodging, and travel at the same rate as is applicable to members of the commission.

Sec. 17. Section 30.03(a), Alcoholic Beverage Code, is amended⁴ to read as follows:

(a) The commission may, in its discretion, issue on a temporary basis a daily temporary mixed beverage permit. A daily temporary mixed beverage permit may be issued only to a holder of a mixed beverage permit. A daily temporary mixed beverage permit may be issued only for the temporary sale of authorized alcoholic beverages at picnics, celebrations, or similar events.

Sec. 18. Chapter 1, Alcoholic Beverage Code, is amended by adding⁵ Section 1.07 to read as follows:

Sec. 1.07. Resident Aliens

(a) For purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen or Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not a United States citizen but who legally resides in the state is treated as a United States citizen and a citizen of Texas.

(b) If it is required that an individual have resided in the state for a specified period of time, an alien legally residing in the state satisfies the requirement if he has legally resided in the state for the prescribed period of time. If an alien becomes a United States citizen while residing in Texas, any continuous period of time he legally resided in the state immediately before becoming a citizen is included in computing his period of continuous residence in the state.

Sec. 19. Section 32.03(d), Alcoholic Beverage Code, is amended⁶ to read as follows:

(d) No application for membership may be approved until the application has been filed with the chairman of the membership committee or

3. V.T.C.A. Alcoholic Beverage Code, § 5. V.T.C.A. Alcoholic Beverage Code, § 5.441.

4. V.T.C.A. Alcoholic Beverage Code, § 30.03(a) 5. V.T.C.A. Alcoholic Beverage Code, § 1.07.

6. V.T.C.A. Alcoholic Beverage Code, § 32.03(d)

board and approved by the chairman. The committee or board may authorize the chairman or a designated agent to issue preliminary memberships without the approval of the committee or board for a period not exceeding three days on the request of an applicant for membership. A preliminary member has all of the privileges of membership in the club. If the committee or board does not approve the application before the expiration of the preliminary membership, the club shall pay to the state the fee required of temporary members under Section 32.09 of this code. The club shall remit the fees and record and report preliminary memberships as the commission or the administrator prescribes.

Sec. 20. Section 61.74, Alcoholic Beverage Code, is amended⁷ to read as follows:

Sec. 61.74. Grounds for Cancellation or Suspension: Distributor

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41–101.43, 101.68, 102.11–102.15, 104.04, 108.01, or 108.04–108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) knowingly sold or delivered beer to a person under 18 years of age; or

(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufactur-

7. V.T.C.A. Alcoholic Beverage Code, §
61.74.

er other than the brand or trade name of the manufacturer shown on the container.

(b) Each ground specified in Subsection (a) of this section also applies to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. The grounds specified in Subdivisions (7)–(9) and (13)–(15) also apply to an agent, servant, or employee of the licensee.

Sec. 21. Section 106.05(b), Alcoholic Beverage Code, is amended ⁸ to read as follows:

(b) A minor may possess an alcoholic beverage:

(1) while in the course and scope of his employment if he is an employee of a licensee or permittee and the employment is not prohibited by this code; or

(2) if he is in the presence of an adult parent, guardian, or spouse, or other adult to whom he has been committed by a court.

Sec. 22. Section 66.02, Alcoholic Beverage Code, is amended ⁹ to read as follows:

Sec. 66.02. Fee

The annual fee for a branch distributor's license is \$50 per year or fraction of a year.

Sec. 23. Sections 105.01 and 105.02, Alcoholic Beverage Code, are amended ¹⁰ to read as follows:

Sec. 105.01. Hours of Sale: Liquor

(a) Except as provided in Sections 105.02, 105.03, and 105.04 of this code, no person may sell, offer for sale, or deliver any liquor:

(1) on New Year's Day, Thanksgiving Day, or Christmas Day;

(2) on Sunday; or

(3) before 10 a. m. or after 9 p. m. on any other day.

(b) When Christmas Day or New Year's Day falls on a Sunday, Subsection (a) of this section applies to the following Monday.

Sec. 105.02. Hours of Sale: Wholesalers and Local Distributors to Retailers

(a) Except as provided by Subsection (b) of this section, a wholesaler or a local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 7 a. m. and 9 p. m. on any day except Sunday and Christmas Day.

(b) A local distributor's permittee may not sell, offer for sale, or deliver any liquor on a day on which a package store permittee is prohibited from selling liquor.

Sec. 24. Chapter 102, Alcoholic Beverage Code, is amended by adding ¹¹ Section 102.18 to read as follows:

Sec. 102.18. Manufacturer: Prohibited Interests

(a) This section applies to the following:

(1) a holder of a manufacturer's or nonresident manufacturer's license;

(2) an officer, director, agent, or employee of an entity named in Subdivision (1) of this subsection; or

(3) an affiliate of an entity named in Subdivision (1) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

8. V.T.C.A. Alcoholic Beverage Code, § 106.05(b).

9. V.T.C.A. Alcoholic Beverage Code, § 66.02.

10. V.T.C.A. Alcoholic Beverage Code, §§ 105.01, 105.02.

11. V.T.C.A. Alcoholic Beverage Code, § 102.18.

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(b) No entity named in Subsection (a) of this section may have any interest in the license, business, assets, or corporate stock of a holder of a general, local, or branch distributor's license.

Sec. 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 27, 1979, by a non-record vote; House concurred in Senate amendments to H. B. No. 1740 on May 24, 1979, by a non-record vote; passed by the Senate, with amendments, on May 24, 1979: Yeas 31, Nays 0.

Approved June 13, 1979.

Effective Aug. 27, 1979, 90 days after date of adjournment.

OBSCENITY—DEFINITION—PENALTIES

CHAPTER 778

H. B. No. 1741

An Act relating to the definition of obscene and to the elements of and penalties for the offense of obscenity.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 43.21, Penal Code, is amended¹² to read as follows:

Sec. 43.21. Definitions

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of

¹² V.T.C.A. Penal Code, § 43.21.